

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1 – 6 and 8 - 22 are pending in the present application. Claims 1, 5, and 13 - 17 are amended. Claim 7 is cancelled and claim 22 is added. Claims 1, 5, 8, 13, 17 and 21 are independent claims.

Allowable Subject Matter

Applicants thank the Examiner for noting that claims 8 – 12 and 21 are allowable as written. Applicants wish to pursue the patentability of all claims at this time, however.

Scope of Amendments

Applicants respectfully submit that the amendment to independent claim 1 consists only of incorporating the subject matter of now-cancelled dependent claim 7 into independent claim 1. Applicants therefore respectfully submit that the scope and subject matter of independent claim 1 is the same as that of now-cancelled claim 7. No other change to independent claim 1 is intended by this amendment.

Claim Rejections – 35 U.S.C. §101

Claims 1 – 7 and 13 – 20 stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Insofar as it pertains to the presently pending claims, this rejection is respectfully traversed.

No Prima Facie Case

"The examiner bears the initial burden ... of presenting a prima facie case of unpatentability." In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (MPEP §2106.IV.D). Applicants respectfully submit that the Examiner presents no evidence or arguments beyond the mere assertion that claims 1 – 7 and 13 – 20 are abstract and without practical application. As noted in MPEP §2106.IV.D, the burden of showing why a claim is eligible for patent protection shifts to the applicants only "after USPTO personnel identify and explain in the record the reasons why a claim is for an abstract idea with no practical application." (MPEP §2106.IV.D). Applicants respectfully submit that the Examiner presents no explanation in the record for why the claims in question are directed to abstract ideas, therefore this rejection under 35 U.S.C. §101 is incomplete and deficient.

Independent Claim 1

Independent claim 1, as amended, pertains to a method for the identification of potential targets from image data. This is a real-world result whose value is immediately apparent to practitioners in the arts of imaging and image processing. A potential target identified in image data is a tangible and useful outcome for any tracking, targeting, or object identification system, as well as for many other potential imaging and detection applications. A potential target is not some abstract notion lacking definition, but is a fairly narrow and limited concept in the realms of image processing and imaging. Furthermore, Applicants respectfully submit that the method, as claimed, is repeatable and its results reproducible, therefore the method is concrete as well as tangible and useful. Applicants therefore respectfully submit that the method of independent

claim 1 does not qualify as an “abstract idea” under 35 U.S.C. §101 and is therefore not subject to the Judicial Exception standards that the Examiner is attempting to apply (see MPEP §2106.IV.C.2.(2) a – c).

Independent Claims 5, 13, and 17

Applicants respectfully submit that independent claims 5, 13, and 17 produce tangible, useful, and concrete outcomes for at least the same reasons as set forth with respect to independent claim 1.

Claims 2 – 4, 6, 14 – 16 and 18 – 20

Applicants respectfully submit that claims 2 – 4, 6, 14 – 16, and 18 – 20 are allowable at least by virtue of their dependency from independent claims 1, 5, 13, and 17.

Summary

At least for the reasons set forth above regarding the Examiner’s failure to establish a *prima facie* case of unpatentability and regarding the tangible, concrete, and useful outcomes of independent claims 1, 5, 13, and 17 and all claims depending therefrom, Applicants respectfully submit that rejection under 35 U.S.C. §101 is incorrect and inapplicable. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claim Rejections – 35 U.S.C. §112

Claims 1 and 13 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the claims are rejected because, although they relate to “identifying a potential target from image data,” the claims contain no step related to determining or identifying. Applicants have amended independent claims 1 and 13 to now recite steps of “identifying” and “determining,” as per the Examiner’s suggestion. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but to merely show the state of the art, no comment need be made with respect thereto.

In view of the above amendment, applicant believes the pending application is in condition for allowance. Thus, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Application No. 10/555,104
Amendment dated December 11, 2008
Response to Office Action of September 12, 2008

Docket No.: 4358-0113PUS2

However, should the Examiner believe that any outstanding matters remain in the present application, the Examiner is requested to contact Applicants' representative, Naphtali Matlis (Reg. No. 61,592) at the telephone number of the undersigned in order to discuss the application and expedite prosecution.

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Respectfully submitted,

By 

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